

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
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Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands)	WT Docket No. 03-66 RM-10586
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Part 1 of the Commission's Rules - Further Competitive Bidding Procedures)	WT Docket No. 03-67
)	
Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service Amendment of Parts 21 and 74 to Engage in Fixed Two-Way Transmissions)	MM Docket No. 97-217
)	
Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico)	WT Docket No. 02-68 RM-9718
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REPLY COMMENTS OF THE SCHOOL BOARD OF BROWARD COUNTY

The School Board of Broward County ("SBBC") herewith submits its Reply Comments in the captioned proceeding. As we stated in our initial Comments, the outcome of this proceeding should be a reorganized spectrum band operating under rules and procedures that continue to reserve ITFS spectrum for educators, and establish the flexibility that will permit efficient technical operations for broadband data applications, while preserving existing ITFS video service capabilities.

I. The Coalition's Proposal Should Be Adopted.

The majority of ITFS parties have expressed support in their initial Comments for the "Coalition Proposal" of NIA, CTN, and WCA. SBBC's view is that the FCC should adopt the Coalition Proposal because it most effectively synergizes the variety of considerations that the Commission's final decision in this proceeding should exhibit in

order to be deemed exemplary. In particular: (1) the Coalition's Proposal coherently harmonizes the diverse public interest objectives in play in the proceeding; (2) the Proposal is pragmatically compelling – it sets forth workable and realistic procedures and timelines; (3) the Proposal is empirically strong, the product of extraordinary labor by individuals and organizations with vast experience in the ITFS and MMDS sectors and possessing technical, regulatory, and policy expertise of high quality; (4) the Coalition's plan is fundamentally fair to the diversity of interests that will be affected by the FCC's final rules; and (5) the Proposal is remarkably objective, reflecting consideration of the issues from divergent perspectives.

In our view, the confluence of these critical five dimensions in the Coalition's plan make it exceptionally compelling, establish its analytical and technical integrity, and denote the optimal public interest balance with respect to the technical and policy issues to be resolved in this proceeding. SBBC does not make these observations lightly. As explained in our initial Comments, Broward County has been an ITFS licensee for more than twenty-five years. We have extensive experience assessing the value that our ITFS frequencies have added to SBBC's educational mission. At the same time, our own technology plans call for the ongoing implementation of evolving, cutting-edge uses for this spectrum. We therefore urge the crafting of a regulatory framework that judiciously accommodates historical operations as well as future broadband applications sufficient to satisfy education's increasing data services needs. The Coalition Proposal, in our view, intelligently structures such a framework.

II. ITFS Licensees Should Not Be Permitted To Sell Their Licenses To Commercial Entities.

Several commenters (including Sprint and EarthLink) argue that ITFS licensees should have the option, in their sole discretion, to sell their spectrum to commercial entities if they deem such a transaction to best meet their educational and instructional needs. Other parties (such as Motorola, Rural Commenters, and CTIA) urge that the FCC's permitting ITFS licensees to sell their license rights in the commercial marketplace is desirable because this reflects the spectrum's being put to its 'highest and best use'. Relatedly, such parties argue that open eligibility would enhance competition and improve the availability of services.

Each of these positions relies, implicitly or explicitly, on the same key premise – namely, that the Commission's achieving the 'highest and best use' for ITFS spectrum necessarily requires the unfettered use of, or reliance upon, market forces.

This argument, which is beguiling because the felicitous phrase 'highest and best use' has a positive tenor, rests on a highly erroneous premise and thus is manifestly invalid. The error is that the argument conflates FCC licenses with purely commercial interests. With respect to the latter, which are freely exchanged in day-to-day commerce, it makes sense to think that unencumbered transactions bring to pass efficient allocations of such interests – for instance, on the theory that an investor who has paid market price for something would not have done so had he not the intention to utilize that item optimally and thus realize a return on his investment.

An FCC license, however – while having some attributes in common with pure commercial goods – is different in a critical respect. To state the obvious, it is a 'mere license' – a limited property interest subject to a complex scheme of statutory and regulatory conditions. Thus, FCC licensees are deemed, not 'owners' of their spectrum

rights, but ‘stewards’ thereof, with the responsibility to operate their facilities in the public interest. In this regulatory sphere, the ‘highest and best use’ of a license means that it is used in furtherance of the public interest.

Consistent with this notion, various regulatory mechanisms exist to ensure that licensees will honor their stewardship and thus that their licenses will continue to be put to the ‘highest and best use’. Consider, for instance: the requirement to have operated one’s station in the public interest in order to merit license renewal; or to have complied with performance or buildout standards in order to maintain a license as valid operating authority; or the penalty of automatic forfeiture of a license for failure to make timely auction installment payments, or revocation of a license for serious violation of controlling statutes and regulations.

It is by virtue of the distinct public interest dimension of a license that the FCC in its regulations establishes, *inter alia*, particular services for given purposes. ITFS specifies use of this spectrum for educational services. Thus, to talk of freely exchanging spectrum reserved for educational use as a means for achieving the ‘highest and best use’ of the spectrum is misconceived. That sort of language could *only* be coherent on the radical assumption that ‘highest and best use’ is to be inexorably achieved without any regard to whether the spectrum ultimately is employed for educational purposes. If that were, in fact, the Commission’s vision – and we trust it is not, based on the FCC’s numerous expressions of commitment in the NPRM to preserve this spectrum for educational purposes – such an approach must not be disguised as harmonizing with the interests of education. Rather, the issue at that point would have dissolved, quite simply, into one concerning merely the spectrum’s raw economic value.

III. A Key Factor For Properly Conceptualizing The Notion of ‘Highest And Best Use’ In This Context Is The Vital Role Of Broadband In Education.

In our initial Comments, we expressed concern that the magnitude of broadband’s role in contemporary education might be underquantified if the FCC’s rendering of the public interest calculus is too heavily influenced by market economics. To be sure, competition, new investment, and innovation, can have salutary effects throughout the economy. There is today, however, a genuine sense in which public education is acquiring a logical priority not previously in play, such that it should be viewed as a key predicate for the fullest realization of these other policy objectives over time. If our public schools do not produce students equipped to play a role in the global knowledge economy, innovation will be sub-par, our competitive prowess will be diluted, and new investment will go overseas. Broadband capability is not merely a useful tool but a *sine qua non* for high-quality public education – that is, education of a nature and scope demanded by a knowledge-based economy. Thus, to the extent that FCC policy developed in this rulemaking would protect broadband capability for educational institutions, this would harmonize with and support the Commission’s other important policy objectives. Indeed, we urge the FCC to employ that principle as a kind of synthesizing talisman in this proceeding.

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Respectfully submitted,

THE SCHOOL BOARD OF BROWARD COUNTY

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